

FILE COPY

Office - BOSTON, MASS., U. S.
Dated

NOV 9 1943

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 482

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ET AL..

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.

MOTION TO AFFIRM BY GLENDENNING MOTOR-
WAYS, INC.

✓ FRED W. PUTNAM,
Counsel for Appellee,
Glenedenning Motorways, Inc.



INDEX.

SUBJECT INDEX.

	Page
Motion to affirm	1
Statement in support of motion	2
Authorities	6

TABLE OF CASES CITED.

<i>Alton Railroad Co. v. U. S.</i> , 315 U. S. 15, 62 Sup. Ct. 432	6
<i>McArthur, et al. v. U. S.</i> , 315 U. S. 787, 62 Sup. Ct. 915	6
<i>McDonald v. Thompson</i> , 305 U. S. 263, 59 Sup. Ct. 176	6



UNITED STATES DISTRICT COURT, DISTRICT OF
MINNESOTA, FOURTH DIVISION

Civil Action No. 811.

CHICAGO, SAINT PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY (A WISCONSIN CORPORATION), ET
AL.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA; INTERSTATE COM-
MERCE COMMISSION; AND CORNELIUS W. STYER,
DOING BUSINESS AS "NORTHERN TRANSPORTATION COM-
PANY,"

Defendants;

GLENDENNING MOTORWAYS, INC.,

Intervening Defendant.

MOTION ON BEHALF OF INTERVENING DEFEND-
ANT, GLENDENNING MOTORWAYS, INC., FOR
AFFIRMANCE OF ORDER OF DISTRICT COURT.

Now comes Glendenning Motorways, Inc., the above named intervening defendant, by its attorney, Fred W. Putnam, Esq., of Minneapolis, Minnesota, and moves the Court for an order affirming the decision in the above entitled case issued by the United States District Court, District of Minnesota, Fourth Division, from which appeal is taken by the plaintiffs herein.

The basis of said motion is:

(1) That the issues raised by this appeal and now before this Court are matters so unsubstantial as not to need further argument.

(2) That the only issue raised by the appeal is whether there was evidence before the Interstate Commerce Commission to support its order; and that the appeal papers clearly show that there was sufficient evidence before the Commission upon which the Commission could predicate the order issued.

Statement in Support of Motion.

Glendenning Motorways, Inc., the intervenor herein, is a corporation and is carrying on operations as a common carrier by motor vehicles under permits of the Interstate Commerce Commission. It serves territory generally described as follows:

From Chicago and Milwaukee to the Twin Cities;
Twin Cities to Fargo, North Dakota;
Twin Cities to Duluth, Minnesota; and
Chicago and Milwaukee points to Southern Minnesota,
including such cities as Rochester and Mankato.

On October 24th, 1941, Division 5 of the Interstate Commerce Commission issued its order on the application of Cornelius W. Styer authorizing the issuance of a certificate of public convenience and necessity. Thereafter the rail carriers filed a petition for reconsideration of that order, and on April 6th, 1942, the full Commission entered its order denying the petition for rehearing. On July 11th, 1942, the Interstate Commerce Commission issued its certificate of public convenience and necessity to Cornelius W. Styer pursuant to the order of October 24th, 1941.

Thereafter and on September 22nd, 1942, Glendenning Motorways, Inc., entered into a contract to purchase the rights of Mr. Styer under said certificate issued by the Interstate Commerce Commission. Thereafter a petition was filed with the Interstate Commerce Commission for the approval of said purchase, and said hearing was held on October 31st, 1942. Upon said date (October 31st, 1942) Mr. Glendenning was given a copy of the complaint that was filed in the District Court, and not served on Mr. Styer until several days later, asking said District Court to review the action of the Interstate Commerce Commission in granting said certificate. Thereafter the Interstate Commerce Commission duly approved the sale from Mr. Styer to Glendenning Motorways, Inc., and said Glendenning Motorways, Inc. is now in possession of and operating the properties owned by Mr. Styer over routes authorized by the certificate issued July 11th, 1942. On the showing of the interest of Glendenning Motorways, Inc. the District Court authorized said Company to intervene in said proceeding to protect its interest.

The assignment of errors in behalf of the plaintiffs clearly shows that the sole issues raised are based upon whether or not there was evidence before the Commission upon which they could rest their decision.

The trial Court quotes at length the testimony of defendant Styer, given before the Commission, as follows, to-wit:

"I claim to have a regular operation and an irregular operation in Minnesota. The regular operation is over the routes shown on Exhibit '1'. The irregular territory or routes are not indicated on this exhibit. I claim to have regular and irregular operations of general commodities. The regular operation as indicated by the routes shown on this map are the routes over which our trucks go daily and that service is given. Those trucks go through those towns over those routes whether or not they have shipments for

4

every town on every particular day. The irregular operation, for example, would be a shipment for Albert Lea where we would not go unless we had a shipment. In that nature it is irregular. The regular route operations are more or less on a fixed time schedule. That is the bulk of my operations. The irregular operation is only supplemental to our principal operation. It is principally for back haul out of South Dakota. The movement is unbalanced between the west bound and east bound freight and consequently the occasion arises for handling freight other than that destined to points on the regular routes, to attempt to balance the amount of freight moving, so that the trucks can more nearly move loaded in both directions. When I mention Albert Lea I don't know whether or not we have served that point. I mentioned that as an example.

What we are asking for is a territory to which we offered service prior to June 1 and to which we have offered service up to the present date, over irregular routes on loads when available because there is no direct service to that point and there is a demand for service. We have wanted it as a territory, to be operated in conjunction with our irregular route operation. In other words our irregular route operation is intended to take care of the movement mainly from South Dakota back into Minnesota. We are not asking for the right to transport commodities in interstate commerce from Minneapolis to Albert Lea. We are specifically restricting so as not to apply in interstate commerce between points in Minnesota. In short our operations from the Twin Cities to the South Dakota territory is chiefly our regular route operations.

Originally we asked for territory in the entire State of Minnesota. We have now restricted that to a small territory in the Southern and Southwestern part of Minnesota.

On and prior to June 1, 1935, I solicited business for intermediate points on the regular routes I operated over. I contacted personally quite a few shippers. * * * It was my purpose from the beginning to solicit and render service to the intermediate points."

Based upon the testimony as quoted the Court then quotes the following finding of the Commission:

"Prior to June 1, 1935, applicant served the intermediate points on routes 1, 2, 4 and 5 of Brookings, Iroquois, Forestburg, and Madison. Applicant does not claim the right to transport interstate shipments from the Twin Cities to points on his routes in Minnesota, but claims that such points were served eastbound from South Dakota. Although the proof of service at Intermediate points on the above routes is not impressive, when considered in connection with the fact that operations by applicant were instituted only 2 months prior to the statutory date and the testimony of applicant that he did not limit his service to terminal points but held out service at all intermediate points and actually solicited such business, we are convinced that he should be authorized to serve all intermediate points on routes 1, 2, 4 and 5, and that a restriction to serve certain intermediate points in one direction only would make the authority granted unnecessarily complicated and it will not be imposed."

The testimony of Mr. Styer quoted by the Court is set forth in the statement of evidence filed herein by the plaintiffs (p. 19) and are excerpts from the evidence before the Commission (pp. 277-283, inclusive).

The Commission accepted this evidence as worthy of belief and consideration and as basis for their order, and the quotation of the same by the trial Court is certainly an approval of the action of the Commission, so that no matter to what extent the record of this case is examined, or to what extent briefs are written and oral arguments presented, this Court must return to these portions of the record and to the conclusions arrived at by the Commission that there was evidence in support of the Commission's findings, and that the trial Court so found, so that the only question raised by the appeal is whether or not the evidence sustains the order of the Commission, and this has been passed upon by the trial Court.

The objections made by the plaintiffs herein go only to limited portions of the order issued by the Interstate Commerce Commission. No issue is raised as to the granting of rights between Minneapolis and St. Paul and points in South Dakota and between points in South Dakota. The only issue is between points within the State of Minnesota, and as to these points it is conceded the Commission would be authorized to issue authority for irregular operations. The points that the plaintiffs object to are points upon regular routes between the Twin Cities and South Dakota through which the motor vehicles of the defendant were operated and as to which the defendant testified that he had solicited business prior to June 1st, 1935, and had served these points during 1935 to the date of hearing. The points involved are not heavily populated, the volume of business would not be large, and the amount of freight that would be transported would be unsubstantial, and the actual issues raised by this appeal and now before this Court are matters so unsubstantial as not to need further argument.

Authorities.

Alton Railroad Company v. United States, 315 U. S. 15; 62 Sup. Ct. Rep. 432 (decided January 12, 1942); *McArthur, et al. v. United States*, 315 U. S. 787; 62 Sup. Ct. Rep. 915 (A per curiam decision affirming 44 Fed. 697); *McDonald v. Thompson*, 305 U. S. 263; 59 Sup. Ct. Rep. 176).

Respectfully submitted,

FRED W. PUTNAM,
Attorney for Glendenning Motorways, Inc.,
826 First National-Soo Line Bldg.,
Minneapolis, Minnesota.

Dated August 27th, 1943.